***THE HON'BLE SRI JUSTICE P.S. NARAYANA**

+ Writ Petition No.21260 of 2006

% 30.10.2007

Dr.K.S.Ashok Kumar

.... Petitioner

Vs.

$ The Cantonment Executive Officer, Office of the Cantonment Board, Court Compound, S.P.Road, Secunderabad-500 003 and another.

.... Respondents

<GIST :

>HEAD NOTE :

! Counsel for petitioner : Sri P.R.Prasad

^ Counsel for respondent No.1: Sri Deepak Bhattacharjee

?CASES REFERRED :-

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.21260 of 2006

30.10.2007

Between

Dr.K.S.Ashok Kumar

…Petitioner

And

The Cantonment Executive Officer, Office of the Cantonment Board, Court Compound, S.P.Road, Secunderabad-500 003 and another.

…Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.21260 of 2006

ORDER:

1. Dr.K.S.Ashok, writ petitioner, filed the present writ petition praying for a writ of Mandamus declaring the action of the first respondent in rejecting his application for permission for construction of compound wall, vide Lr.No.EB/P.No.33/Seva Mandal CHS/EM'pally 39/2131, dated 13.06.2006, on the ground that he has not obtained No Objection Certificate (NOC) from the Hyderabad District Collector and Airport Authority of India as illegal, arbitrary, without jurisdiction and consequently direct the respondents to accord permission for construction of compound wall in respect of the property in question forthwith, and to pass such other suitable orders.

2. A counter affidavit is filed by the first respondent.

3. Sri P.R.Prasad, learned counsel representing the petitioner, had taken this Court through Sections 2(4) and 194 of the Cantonments Act, 1924 (for short hereinafter called 'the Act', for the purpose of convenience) and also had drawn the attention to the corresponding provisions under the Cantonments Act, 2006 (Act 41 of 2006). The learned counsel would contend that the objections raised in the counter affidavit are not tenable.

4. On the contrary, Sri Deepak Bhattacharjee, the learned Standing Counsel representing the first respondent, would maintain that in the light of the stand

taken in the counter affidavit filed by the first respondent, unless necessary certificates are obtained, relief as prayed for by the petitioner cannot be granted. The learned counsel had also drawn the attention of this Court to Section 194 (2)(a) of the Act and would maintain that in the light of the same, the objections raised by the first respondent cannot be said to be unsustainable.

5. Heard the learned counsel.

6. It is stated that the petitioner is the owner and possessor of plot No.33 situated in Survey No.74/9 (part) admeasuring 516.67 or 431.94 sq.yards and sq.mts., situated at Marredpally, Near Mahindra Hills, Hyderabad Urban Taluka, Hyderabad, having purchased the same from Cooperative Society under a registered sale deed, dated 30.04.1985, bearing Document No.5086 of 1983, dated 07.10.1983 of Book I, Vol.No.1174 from 219 to 232 and from the date of purchase, he has been in possession and enjoyment of the same. It is also stated that in order to prevent any encroachment over the said property, the petitioner applied for permission to Cantonment Board for construction of compound wall covering the plot, but the Cantonment Board through the impugned letter, dated 13.06.2006, rejected his request for permission on the following grounds:

1. Get NOC from Hyderabad District Collector from land point of view, and
2. Get NOC from Airport Authority of India regarding height point of view.

7. It is stated that the reasons given by the first respondent while refusing permission are wholly illegal

and without jurisdiction. It is further stated that under the provisions of Hyderabad Municipal Corporations Act, 1955, the District Collector is not authorized to issue any NOC before granting permission by a competent authority and no obligation is imposed on the competent authority to insist NOC from the revenue authority. The competent authority can as well reject the permission, if the applicant does not satisfy the requirements for according permission under the Building Bye-laws/Regulations. In the absence of requirement of obtaining NOC from the revenue authority under the provisions of the Hyderabad Municipal Corporations Act, 1955, the competent authority cannot reject the application for permission.

8. It is further averred that the present application is only seeking permission for construction of compound wall and the petitioner is not raising any permanent structures whatsoever, and it is the duty of the competent authority to grant permission for construction of compound wall. It is also stated that a copy of title deed was also submitted to the authority at the time of making application for permission and that the District Collector has nothing to do with the permission to be accorded by the competent authority under the Regulation. It is stated that the other reason for rejecting the request is that the petitioner has not obtained NOC from the Airport Authority of India regarding height of view and the same is also equally unsustainable and perverse, since the petitioner is not raising any permanent structures. In the circumstances, the objections raised by the first respondent are wholly

illegal and violative of Articles 14 and 16 of the Constitution of India. Hence, the petitioner prayed for appropriate orders.

9. In the counter affidavit filed on behalf of the first respondent, it is stated that on consideration of the application of the petitioner for grant of permission for construction of compound wall, it was noticed that he has not obtained NOC from the Airport Authority of India regarding height of the proposed building and also from the District Collector, Hyderabad, which is compulsory as per Aircraft Act, since Survey No.74/4 of Balamria Cooperative Society, East Marredpally, is situated in the landing and take off funnel of Hyderabad Airport.

10. It is also averred that as per the instructions received by the Board from Ministry of Civil Aviation, the land in Survey No.74/4 is claimed by the Government of Andhra Pradesh and an application is filed before the Land Grabbing Tribunal, Hyderabad by the Government of Andhra Pradesh which is pending adjudication. In view of the same, the District Collector, Hyderabad addressed a letter to the Board to insist NOC from the Collectorate before any plan concerning the land in the said survey number is sanctioned by the Board and therefore, a letter was addressed to the petitioner on 10.08.2007 to obtain NOC before entertaining the application under Section 179 of the Act. Therefore, it is stated that there was no violation of any statutory Rules or Reguations in addressing the letter for production of NOC from Airport Authority of India and the District Collector, Hyderabad.

11. In the light of the respective stands taken by the parties, the question to be decided is that whether NOC from the District Collector, Hyderabad and Airport Authority of India would be necessary in the facts and circumstances of the case.

12. It is not in serious controversy that the provisions of the Cantonments Act, 1924 alone would be applicable to the present case. Section 2 of the Act deals with definitions and Section 2(4) of the Act defines building as under:

> ‘ “building” means a house, outhouse, stable, latrine, shed, hut or other roofed structure whether of masonry, brick, wood, mud, metal or other material, and part thereof, and includes a well and a wall [other than boundary wall] but does not include a tent or other portable and temporary shelter;] ’

13. Section 194 of the Act deals with boundary walls, hedges and fences and the said provision reads as hereunder:

> **194. Boundary walls, hedges and fences:-** (1) No boundary wall, hedge, or fence of any material or description shall be erected in a cantonment without the permission in writing of the Executive Officer.
>
> (2) The Executive Officer may, by notice in writing, require the owner or lessee or any land in the cantonment-
>
> (a) to remove from the land any boundary wall, hedge or fence which is in its opinion unsuitable, unsightly or otherwise objectionable; or
>
> (b) to construct on the land sufficient boundary walls, hedges or fences of such material, description or dimensions as may be specified in the notice; or
>
> (c) to maintain the boundary walls, hedges or fences

of such lands in good order:

provided that, in the case of any such boundary wall, hedge or fence which was erected with the consent or under the orders of the Executive Officer, or which was in existence at the commencement of this Act, the Board shall make compensation for any damage caused by the removal thereof.

(3) The Executive Officer may, by notice in writing require the owner, lessee or occupier of any such land to cut or trim any hedge on the land in such manner and within such time as may be specified in the notice.

14. Section 181 of the Act deals with power of Board to sanction or refuse erection of building and the said provision reads as hereunder:

181. Power of Board to sanction or refuse:- (1) The Board may either refuse to sanction the erection or re-erection, as the case may be, of the building, or may sanction it either absolutely or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters, namely :-

(a) the free passage or way to be left in front of building;

(b) the space to be left about the building to secure free circulation of air and facilitate scavenging and the prevention of fire;

(c) the ventilation of the building, the minimum cubic area of the rooms and the number of height of the storeys of which the buildings may consist;

(d) the provision and position of drains, latrines, urinals, cesspools or other receptacles for fifth;

(e) the level and width of the foundation, the level of the lowest floor and the stability of the structure;

(f) the line of frontage with neighbouring buildings if the building abouts on a street;

(g) the means to be provided for egress from the building in case of fire;

(h) the materials and method of construction to be used for external and party walls for rooms, floors, fire-places and chimneys;
(i) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on; and
(j) any other matter affecting the ventilation and sanitation of the buildings,
and the person erecting the building shall obey all such written directions in every particular.
(2) The Board may refuse to sanction the erection or re-erection of any building on any grounds sufficient in the opinion of the Board affecting the particular building:
provided that the Board shall refuse to accord sanction the erection or re-erection of any building if such erection or re-erection is not in conformity with any general scheme sanctioned under Section 181A.
(3) The Board, before sanctioning the erection or re-erection of a building on land which is under the management of the Defence Estates Officer, shall refer the application to the Defence Estates Officer for ascertaining whether there is any objection on the part of Government to such erection or re-erection; and the Defence Estates Officer shall return the application together with his report thereon to the Board within thirty days after it has been received by him.
(4) The Board may refuse to sanction the erection or re-erection of any building-
(a) when the land on which it is proposed to erect or re-erect the building is held on a lease from the Government, if the erection or re-erection constitutes a breach of the terms of the lease, or
(aa) when the land on which it is proposed to erect or re-erect the building is entrusted to the management of the Board by the Government if the erection or re-erection constitutes a breach of the terms of the entrustment of management or contravenes any of

the instructions issued by the Government regarding the management of the land by the Board, or

(b) when the land on which it is proposed to erect or re-erect the building is not held on a lease from the Government, if the right to build on such land is in dispute between the person applying for sanction and the Government.

(5) If the Board decides to refuse to sanction the erection or re-erection of the building, it shall communicate in writing the reasons for such refusal to the person by whom notice was given.

(6) Where the Board neglects or omits, for one month after the receipt of a alied notice, to make and to deliver to the person who has given the notice any order of any nature specified in this section, and such person thereafter by a written communication sent by registered post to the Board calls the attention of the Board to the neglect or omission, then, if such neglect or omission continues for a further period of fifteen days from the date of such communication the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be, unconditionally:

provided that, in any case to which the provisions of sub-section (3) apply, the period of one month herein specified shall be reckoned from the date on which the Board has received the report referred to in that sub-section.'

15. This is not a case concerned with building permission but only permission to raise compound wall. Section 261 of Act 41 of 2006 corresponds to Section 194 of the Act, which deals with boundary walls, hedges and fences, and the provision more or less appears to be in *para materia*. Be that as it may, on a careful reading of Section 2(4) of the Act along with Section 194 of the Act,

this Court is of the considered opinion that the objections raised by the first respondent cannot be sustained.

16. No doubt, the learned counsel representing the first respondent placed strong reliance on Section 194(2)(a) of the Act, in particular, which specifies that the Executive Officer may by notice in writing require the owner or lessee of any land in cantonment to remove any boundary wall, hedge or fence which in its opinion found unsuitable or otherwise objectionable. It is needless to say that this provision may be invoked at the appropriate stage, but the objections raised at present are that the petitioner is required to produce NOC from the District Collector, Hyderabad and Airport Authority of India. Since the Act does not specify or contemplate production of such certificates, the impugned action of the first respondent cannot be sustained. In the light of the same, rejection of permission for construction of compound wall as requested for by the petitioner cannot be sustained.

17. In the circumstances, the writ petitioner is bound to succeed and the writ petition is accordingly allowed. In the light of the facts and circumstances of the case, permission for construction of compound wall as requested by the petitioner shall be sanctioned in accordance with law within a period of eight weeks from today. No order as to costs.

30.10.2007

Note: LR copy to be marked.

(b/o)

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